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Heather A. Zadina

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

R&S WELL SERVICE, INC., a Wyoming
Corporation, and MARKEL INSURANCE
COMPANY, a Virginia Corporation

Plaintiffs

-vs-

BRIAN THIESSEN, an individual

Defendant.

Case No.: 09 CV 72

**DEFENDANT'S MOTION IN LIMINE TO EXCLUDE STATEMENTS OF
INDIVIDUALS NOT APPEARING AS WITNESSES AT TRIAL**

Defendant, by and through counsel, moves the Court in limine to exclude evidence of any statements of individuals not appearing as witnesses at trial. As grounds for this motion, Defendant informs the Court of the following:

Background

This case arises as a result of an automobile accident which occurred on November 9, 2007. On the morning in question, Eric Rouse, employed by Plaintiff R&S Well Service, Inc. ("R&S") was operating a workover rig on Highway 59 near mile post marker 15.8 in Converse County, Wyoming. An R&S "crew truck" with three R&S employees in it, was immediately behind the workover-rig. Defendant/Counterclaimant Brian Thiessen was also operating his 2001 Peterbuilt

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semi-tractor with an attached trailer, north-bound on Highway 59. As Mr. Thiessen approached the R&S vehicles ahead of him, he observed that the R&S vehicles were pulled off to the right of the highway and out of the lane of travel, either stopped or traveling at an imperceptible rate of speed.

As Mr. Thiessen neared the R&S vehicles, he was unable to observe any turn signals or indication that the R&S vehicles intended to navigate a left turn across the lanes of travel from their position on the right side of the highway. Thiessen moved into the left lane of travel in order to provide the R&S vehicles a wider berth while he passed. As Thiessen began to pass the R&S workover rig, the rig driver began to turn his vehicle across the lanes of traffic and in the direct path of the Thiessen vehicle. As a result, the Thiessen vehicle and the R&S workover rig collided resulting in property damage to both the workover rig and the Thiessen vehicle.

Following the accident, Mr. Rouse and the three crew-truck employees wrote out brief statements concerning the accident for their employer. (Crew truck employees' statements attached hereto as Exhibits A-E).

Motion to Exclude Evidence of Statements by Individuals Not Appearing at Trial

Based on R&S' pretrial memorandum exhibits listing, it is presumed that Plaintiff/Counterdefendant intends to introduce into evidence statements presumably prepared by the three R&S crew-truck employees. R&S has listed Mr. Wolfe, a crew truck passenger, as a may-call witness at trial and has not listed either of the other two crew-truck members, Dan Edelman or David Wright as potential witnesses. It is noted

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that although Defendant Thiessen also included these statements in his pretrial memorandum exhibit listing, he did so only in the event Plaintiff called the presumed authors as witnesses, however, it appears that does not intend to call Mr. Edelman and Mr. Wright. Defendant, therefore, withdraws their statements from his exhibit listing and requests that the Court issue a ruling preventing R&S from introducing statements by any individual not called as a witness at trial, as well as any evidence or testimony pertaining to or mentioning the same, on the basis that such evidence is inadmissible hearsay.

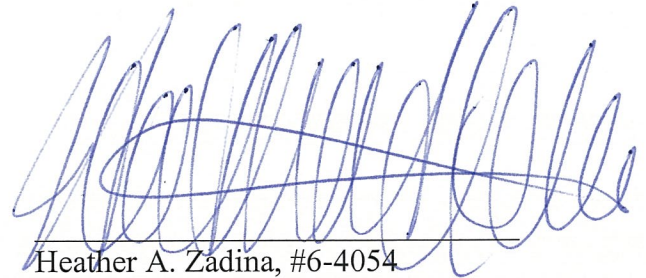
In the present case, it is clear that Wyoming Rules of Evidence 801-804 would prohibit the use of any statements of R&S employees not called as a witness at trial. The statements in question are not sworn statements and were presumably made days after the accident at the behest of Plaintiff R&S. Defendant is entitled the opportunity to examine the authors of any such statements introduced as evidence, regarding their content and the circumstances surrounding their creation – a right which cannot be exercised if the presumed authors are not called as witnesses at trial.

WHEREFORE, Defendant prays the Court for an order granting Defendant's Motion In Limine to Exclude Evidence Statements of Individuals Not Called as Witnesses at Trial, and request that the Court specifically instruct counsel for both parties to admonish witnesses they are not to mention such statements and that all references to the statements of non-witnesses be redacted from any other exhibits used at trial.

Dated this 10th day of November, 2009.

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CERTIFICATE OF SERVICE

This is to certify that on this 10th day of November, 2009 at Cheyenne, Wyoming, served the above and foregoing **DEFENDANT'S MOTION IN LIMINE TO EXCLUDE EVIDENCE OF STATEMENTS OF INDIVIDUALS NOT APPEARING AS WITNESSES AT TRIAL**, electronically to the following:

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0006/009

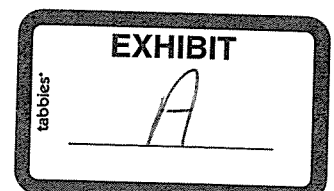
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11/9/07 Friday Accident statement

I, Aaron Wolfe, an employee of R&S was riding in the crew truck following the rig. We were making a left hand turn off Highway 59 when we saw a semi passed us and hit the rig as it was turning.

Aaron Wolfe



R&S/MARKEL-000108

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R&S Well Service, Inc.
P.O. Box 1148
Thermopolis, WY 82443
Employee Statement

11/12/07

Employee Name:

Aron Wolfe
(PRIN)

DOB:

12/2/63

Area:

Douglas

We were on Highway 59, 15 miles north of Douglas heading to a new location when we were turning off the Highway, when a semi passed us in the crew truck (hauling the dog house) and the semi hit the cab of the rig. I'm the employee who fills out the rig work permits so I know that all our lights and blinkers were working properly.

Employee Signature:

Aron Wolfe

Date:

11/12/07

Statement Taken By:

Kevin Gerber

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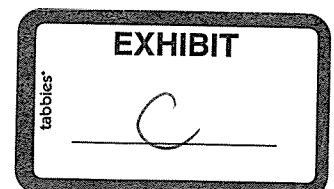
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Dan Edelman I was in the back seat of the company truck when the accident occurred. Eric was making a left hand turn in the rig when a semi. struck the front operator side. Both the rig and crew truck had their blinkers on and the semi failed to yield.

Dan R Edelman



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R&S Well Service, Inc.

P.O. Box 1148

Thermopolis, WY 82443

Employee StatementEmployee Name: David Wright (PRINT) DOB: 11/2/54 Area: Douglas

We were moving from Walter creek to fifteen mile road when we were making a left hand turn I David Wright was driving crew truck following Rig I was back about 100 ft with turn signal on and could hear Rig's turn signal was working also.

When a Simi tried passing and ran into the Rig pushing the Simi into the right margin. No injuries noticed.

Employee Signature: David WrightDate: 11-12-07Statement Taken By: David Wright

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EXHIBITD

R&S/MARKEL-000110

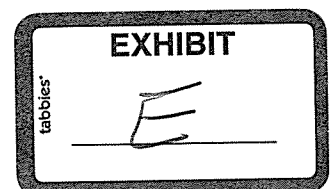
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Dave Wright Driver of company
truck that was following the
Rig when we were making a
left turn a semi tried passing
and ran into the cab of the
Rig. Dave Wright



R&S/MARKEL-000111